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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

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No. 999

H. H. SPETEN, PETITIONER,

vs.

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, RESPONDENT.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit and Brief in Support Thereof.

H. H. SPETEN,
Petitioner,

By F. E. McCurdy,
His Attorney.

Bismarck, North Dakota.

F W F Shafer his attorn
Bismarck N Dak

BUNTON & SKINNER, PRINTERS, ST. LOUIS

INDEX.

Petition 1
Opinions Below 2
Jurisdictional Statement 2
Questions Presented 3
Statutes Involved 4
Statement of Case 4
Reasons for Granting Writ 4
Conclusion 5

Brief 7
Statement of Facts 7
Points urged by the Petitioner 7
1. The Definition of the Clause "for use or consumption other than in the course of trade or business" as used in Section 205, Subdivision "E" of the Emergency Price Act of 1942 7
2. Is it a violation of that portion of the Fifth Amendment to the Constitution forbidding taking of Property of Private Individuals without just compensation for the Administrator to bring this suit not as a penalty but as a civil action? 7
Argument 8
Definition 8
Constitutional Question 9
Conclusion 10

Cases Cited.

Bowles v. Rock, 55 F. Supp. 865 9
Bowles v. Silverman, OPA Service 62:538 9

Statute Cited.

Section 205(e) Emergency Price Control Act of 1942 7

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H. H. SPETEN, PETITIONER,

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CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, RESPONDENT.

Petition for Writ of Certiorari to the Circuit Court of Appeals for the Eighth Circuit.

To the Honorable the Chief Justice and Associate Justices of the United States:

The Petitioner, H. H. Speten, for himself by his attorneys prays that a Writ of Certiorari issue to review the judgment of the Circuit Court of Appeals entered in the above case on the 17th day of January, 1945, being case No. 12,928, in the United States Circuit Court of Appeals for the Eighth Circuit.

OPINIONS BELOW.

The District Court made Findings of Fact, Conclusions of Law and Order for Judgment, of date of June 23, 1944 (Record pages 15, 16, 17 and 18).

The District Court entered a judgment on the same day, June 23, 1944 (Record pages 18 and 19).

The opinion of the Circuit Court of Appeals is not yet reported, and a copy thereof appears at pages 30 to 35 of the printed record.

JURISDICTIONAL STATEMENT.

The judgment of the Circuit Court of Appeals sought to be reviewed was entered on the 17th day of January, 1945.

The jurisdiction of this Court is invoked upon two grounds:

1. The court below by its judgment has construed and defined the phrase "for use or consumption other than in the course of trade or business" as found and used in Section 205, Subdivision "E" of the Emergency Price Act of 1942, approved January 30, 1944, erroneously. In so doing it has changed the meaning of that phrase from a permission for the injured person to sue the wrong doer for his own benefit and has by the same erroneous definition authorized the Administrator, the respondent in this Petition, to bring the action for the benefit of the Government of the United States.

This interpretation of the phrase, above mentioned, if allowed to stand authorizes an unlawful taking of property of a private individual for public use without just compensation and in direct violation of the Fifth Amendment of the Constitution of the United States, which provides:

> "nor shall private property be taken for public use without just compensation."

2. The Court has directly and unequivocally held that for the United States to sue in a civil action as a remedial and not as a penal measure and recover money from a private individual for the benefit of the United States Treasury, is not a violation of that clause.

3. Those two matters which we assign as errors, namely: the interpretation and definition of the phrase, above mentioned, and constitutional questions are matters of wide national interest and arise in every one of the Circuits in the United States. The decision of these questions goes to the foundation of the administration of this Act.

The Act, itself, as a whole, is constitutional and in harmony with our principles of government. The effect of the application of the act in the two respects complained of is so wide spread and far reaching that the importance cannot be easily measured and we know of no decision of this court which has decided either one of these questions. The interpretation of the phrase deprives the farmers, who are a very material part of our population and who carry on the biggest enterprise are the chief beneficiaries in the matter of the relief intended to be given them by The Congress when it passed this Act. The other question goes to the foundation of virtual repeal or enforcement of the quoted clause in our Federal Constitution. We are satisfied these two questions have never been before this Court. We believe they are of importance, warranting a decision by this Court to the end that those questions may be once and for all finally determined.

QUESTIONS PRESENTED.

Two questions are presented:

1. Does the clause "for use or consumption other than in the course of trade or business" mean that a farmer who buys machinery for his own personal use, not for sale

and not for hire, is used in the course of trade or business?

2. Can the United States take the money collected by judgment from an individual in a civil action where the individual is not accused of any crime, not indicted, and not tried for any crime, just merely sued because of some inadvertent violation of some statute, and the money so collected, turned into the United States Treasury for public use "without just compensation."

STATUTES INVOLVED.

Section 205, Subdivision "E" of the Emergency Price Act of 1942, approved January 30, 1942.

A STATEMENT.

A statement is found in the record under the title of Stipulation of Facts (Record pages 10, 11, 12, 13, and 14).

REASONS FOR GRANTING A WRIT.

1. The definition of the term "for use or consumption other than in the course of trade or business" determines who can bring this action. The farmer in this case or the Administrator for the benefit of the United States.

Putting it briefly, we believe it was the intent of the Congress of the United States to provide that any person in the course of trade or business, who purchased at a price in excess of the "ceiling" with intent to sell at a further advance over the "ceiling" price, should not be permitted to bring this action. That it was the intent of Congress that the ultimate consumer, who was the last man to suffer the financial loss, should be permitted to bring the action for his own benefit. We believe the portion of the phrase quoted "other than in the course of trade or business" modifies the clause "the person who buys such com-

modities for use or consumption". That the construction intended by the Congress was that the person who buys such commodities for use or consumption should be entitled to bring the action, but they wished to limit that so that the man who bought at the higher price than the "ceiling" should sue for his own benefit, except in case where he bought it to sell or trade for profit to himself at the expense of another. We think the foregoing is the correct interpretation and definition of the phrase; that definition makes such a tremendous difference in the meaning of the subdivision that it becomes a very important question and changes the whole tenor of the law.

2. The constitutional Fifth Amendment that private property shall not be taken for public use without just compensation, we believe, was intended to prevent just such a procedure as this. No citizen will complain concerning fines being imposed upon them when any person wilfully violates a statute. But to exact money in large sums not as punishment but as a method of taking private property for public use because some one inadvertently violates a statute, which he may not have known to be in existence, not as punishment, is exactly the thing which was sought to be prevented by this portion of the Fifth Amendment to the Constitution of the United States.

CONCLUSION.

1. The decision below, we believe, erroneously determines both those questions which, when applied to this case and others now pending, results in an arbitrary taking the right to sue away from the injared party (and to whom the Fifth Amendment does not apply) and such an interpretation renders a material part of the statute unconstitutional.

2. To hold such procedure constitutional is a holding which deprives a large number of our citizens of constitutional protection to which they are entitled.

Dated February 5, 1945.

H. H. SPETEN,
Petitioner,

By F. E. McCurdy,
His Attorney.

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